

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CARL BRYANT AND PAMELA  
BRYANT**

**v.  
JEFFREY WAHL**

**RESPONDENTS,**

**APPELLANT.**

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DOCKET NUMBER WD78888

DATE: August 2, 2016

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Appeal From:

Jackson County Circuit Court  
The Honorable Kenneth R. Garrett III, Judge

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Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

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Attorneys:

Steven C. Effertz, Independence, MO, for respondents.

David A. Suroff, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CARL BRYANT AND PAMELA  
BRYANT,**

**RESPONDENTS,**

**v.  
JEFFREY WAHL,**

**APPELLANT.**

No. WD78888

Jackson County

Before Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Appellant Jeffrey Wahl ("Wahl") appeals the judgment of the Circuit Court of Jackson County, Missouri, denying his Motion to Set Aside Default Judgment. The Order of Default was entered against Wahl in a civil lawsuit filed by Respondents Carl and Pamela Bryant (collectively "Bryants"). The Bryants alleged that Wahl, their neighbor, unexpectedly entered their home and shot them both multiple times. The suit sought monetary damages for their injuries. Wahl failed to respond to the petition and a default judgment was entered. Wahl alleges that, during the civil suit and at the time the default judgment was entered, he was adjudicated to be incompetent in a criminal case arising from the same incident. The trial court, in denying Wahl's Motion to Set Aside, found that Wahl failed to meet the requirements of Rule 74.05(d) in that Wahl (1) failed to prove that he had a meritorious defense and (2) failed to show good cause to set aside the default judgment. Wahl now appeals, challenging both of these findings as well as the constitutionality of Rules 74.05(a) and (b).

**WE AFFIRM**

**Division Two holds:**

- (1) The trial court did not err in that Wahl failed to prove he had a meritorious defense to the Bryant's claims. Wahl failed to meet the requirements of Rule 74.05(d) and case law, which require that the allegations in a motion to set aside are not self-proving and must be verified or otherwise supported by affidavit or sworn testimony. A request for an evidentiary hearing cannot overcome a deficiency in the pleadings. Further, Wahl failed to affirmatively state a meritorious defense in his unverified petition.
- (2) The trial court did not err in finding that Missouri Supreme Court Rule 74.05, which governs default judgments, is constitutional. Wahl's argument that Rule 74.05 fails to protect incompetent persons from the entry of a default judgment is without merit. Whenever it is suggested or affirmatively appears to the court that a party to litigation

is incapable of caring for their own interests, Rule 55.02(k) requires the appointment of a guardian or next friend. In this case, no suggestion was ever made to the trial court that Wahl was incompetent such that he could not protect his interests. Under Rule 75.05(d) the judgment may have been voidable had Wahl availed himself of the protections of the rule.

Opinion by Gary D. Witt, Judge

July 27, 2016

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